

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO (TOLEDO)

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 3:18-cr-00067

v.

HON. GEORGE CARAM STEEH
SITTING BY DESIGNATION

DAREK LATHAN,

Defendant.

_____ /

ORDER REGARDING DEFENDANT’S SENTENCING HEARING

This matter is before the court on pro se defendant Darek Lathan’s notice of appeal and notice stating that he will not attend his sentencing hearing, scheduled to take place on December 8, 2021 at 1:00 p.m. (Docs. 277 and 278). Defendant’s filings raise two issues as it relates to his sentencing.

The first issue is whether the Court has jurisdiction to proceed with sentencing while defendant’s notice of appeal is pending. Defendant previously filed a notice of interlocutory appeal with the Sixth Circuit on July 12, 2021. (Doc. 237). The Sixth Circuit dismissed the appeal for lack of jurisdiction because defendant had not been sentenced, and therefore a final judgment had not entered in the case. (Order, Doc. 240; citing *United States v. Yeager*, 303 F.3d 661, 665 (6th Cir. 2002) (“the Supreme Court has made clear that for purposes of a defendant’s criminal appeal, a final

decision exists only after the defendant has been sentenced.)) As defendant has still not been sentenced, and therefore no final judgment has been entered, his current notice of appeal is from a non-appealable, non-final order. For the same reasons stated by the Sixth Circuit in its summary dismissal of defendant's previous appeal, defendant's new notice of appeal has been filed prematurely and does not divest this Court of jurisdiction. Defendant must be sentenced before he can move to the next stage and file his appeal. This Court will go forward with defendant's sentencing as scheduled.

The second issue is that defendant indicates he does not wish to attend the sentencing. A defendant who is initially present at trial may voluntarily waive the right to be present during sentencing. Fed. R. Crim. P. 43(c)(1)(B). Defendant will be brought to the courtroom and given an opportunity to speak concerning the sentencing decision if he wishes. However, the Court will not compel defendant to speak at sentencing if he wishes to remain silent.

It is so ordered.

Dated: November 22, 2021

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE